Supreme Court, U.S.
FILED
OCT 19 1979
MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE UNITED STATES

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OCTOBER TERM, 1978

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NO. 79-5080

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ARCHIE W. WILLEFORD,

Petitioner

V.

W. J. ESTELLE, JR., DIRECTOR,
TEXAS DEPARTMENT OF CORRECTIONS,

Respondent

* * *

MEMORANDUM OPPOSING CERTIORARI

* * *

MARK WHITE
Attorney General of Texas

JOHN W. FAINTER, JR.
First Assistant Attorney General

TED L. HARTLEY
Executive Assistant Attorney General

W. BARTON BOLING
Assistant Attorney General
Chief, Enforcement Division

OLIVER C. SUTTON, JR.
Assistant Attorney General

P.O. Box 12548, Capitol Station
Austin, Texas 78711
(512) 475-3281

ATTORNEYS FOR RESPONDENT

IN THE SUPREME COURT OF THE UNITED STATES

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TO THE SUPREME COURT OF THE UNITED STATES:

I. Petitioner through the above entitled cause seeks a review of an Order of the United States Court of Appeals for the Fifth Circuit entered on May 18, 1979. Said Order dealt with Petitioner's pro se application for certificate of probable cause and for leave to appeal in forma pauperis. That application was filed following an Order of the United States District Court for the Southern District of Texas denying Petitioner previous Motion to Proceed in Forma Pauperis and Request for a Certificate of Probable Cause. That Order was entered on February 21, 1979 in Civil Action No. H-78-1452, and was filed pursuant to an Order and Judgment entered on December 10, 1979, wherein the District Court dismissed Petitioner's application for habeas corpus. Said dismissal having been predicated upon Petitioner's failure to state a deprivation of constitutional magnitude. In that particular cause the United States Magistrate in his Memorandum and Recommendation, which was subsequently adopted by the Court, stated; "it is apparent that Petitioner is again raising the same issues which were decided against him in Willeford v. Estelle, 538 F.2d 1194 (5th Cir., September 20, 1976)."

II. This petition for writ of certiorari was filed on July 18, 1979, more than ninety (90) days since the entry of the judgment by the United States Court of Appeals of which Petitioner now seeks review[1]. The period for applying for a writ of certiorari has not been extended by a Justice of this Court. (U.S.C. Title 28 §2101(c) and Rule 22 of this Court).

III. Petitioner seeks to circumvent the order of this Court through the successive filing of applications for certificates of probable cause and for leave to file in forma pauperis, when in reality he should have filed his application for writ of certiorari within ninety (90) days of September 20, 1976 in order to obtain his review. This may be verified by a review of the issues presented by Petitioner in his current application.

Therefore, in actuality Petitioner's application for a writ of certiorari is out of time, and should be dismissed.

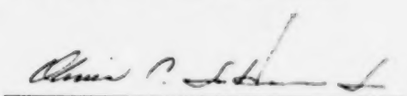
Respectfully submitted,

MARK WHITE
Attorney General of Texas

JOHN W. FAINTER, JR.
First Assistant Attorney General

TED L. HARTLEY
Executive Assistant Attorney General

W. BARTON BOLING
Assistant Attorney General
Chief, Enforcement Division



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1/ That being Willeford v. Estelle, supra.

CERTIFICATE OF SERVICE

I, Oliver C. Sutton, Jr., Assistant Attorney General of Texas, do hereby certify that a true and correct copy of the above and foregoing Respondent's Memorandum Opposing Certiorari has been served by placing same in the United States Mail, postage prepaid, certified, return receipt requested on this the 16th day of October, 1979, addressed as follows:

Archie W. Willeford
TDC# 211490
Ellis Unit
Huntsville, Texas 77340

OLIVER C. SUTTON, JR.
Assistant Attorney General